Government of Kerala
1983

Reg. No. KL/TV(N)/12



KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVIII] Trivandrum, Monday, 25th July 1983 / 3rd Sravana 1905 (Saka) [No. 786

SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 7324/LA4A/83. *Dated, Trivandrum, 25th July,* 1983.

The Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Bill, 1983 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary.
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1983.

Seventh Kerala Legislative Assembly

Bill No. 65

THE KERALA PRESERVATION OF TREES AND REGULATION OF CULTIVATION IN HILL AREAS BILL, 1983

A

BILL

to provide for the regulation of the cutting and destruction of trees in the State of Kerala and for the regulation of cultivation of land in the hill areas in the State.

Preamble.—WHEREAS there has been indiscriminate felling and destruction of trees in the State of Kerala resulting in considerable soil erosion and destruction and loss of the timber wealth of the State;

AND WHEREAS with a view to prevent soil erosion and destruction and loss of the timber wealth in the State and also to preserve the special characteristics of the hill areas in the State as regards landscape, vegetal cover and climate, it is necessary to regulate the felling and destruction of trees and also the cultivation of land in the hill areas in the State;

BE it enacted in the Thirty-fourth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Act, 1983.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 18th day of June, 1983.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "appellate authority" means an appellate authority appointed under sub-section (2) of section 3;

(b) "authorised officer" means an officer appointed under sub-section (1) of section 3;

(c) "cultivation" means raising of cereals, tubers or plantation crops but shall not include raising of kitchen gardens or flower gardens.

Explanation.—In this clause, "kitchen garden" means an area not exceeding five ares appurtenant to a residence and used for growing vegetables for *bona fide* consumption of the residents therein;

(d) "hill area" means—

(i) any land which has not vested in the Government by virtue of the provisions of sub-section (2) or sub-section (3) of section 3 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971);

(ii) any forest land which has been or may be assigned to any person under the Kerala Government Land Assignment Act, 1960 (30 of 1960) or under the Kerala Land Reforms Act, 1963 (1 of 1964), or under any other law;

(iii) any land used principally for the cultivation of cardamom including lands interspersed within the boundaries of the area principally cultivated with cardamom;

(iv) any land which is an enclave within a reserved forest or within any other forest area.

Explanation.—For the purposes of this clause, the expression "reserved forest" shall have the same meaning as in the Kerala Forest Act, 1961 (4 of 1962);

(e) "new cultivation" means cultivation of land which remained uncultivated for three consecutive years;

(f) "owner", in relation to any land, includes a mortgagee, lessee or other person having right to possession and enjoyment of that land;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "tree" means,—

(i) with reference to any land comprising a hill area, any tree; and

(ii) with reference to any other land, any of the following species of trees, namely:—

Sandalwood (Santalum album), Teak (Tectona grandis), Rosewood (Dalbergia latifolia), Irul (Xylia xylocarpa), Venthekku (Lagerstroemia lanceolata), Thempavu (Terminalia tomantosa), Mulluvenga (Bridelia

retusa) Kampakam (Hopea parviflora), Venga (Pterocarpus marcupium), Chempakam (Michelia chempaca), Chadachi (Grewia tiliaefolia), Chandana vempu (Cedrela toona), Cheeni (Tetrameles nudiflora), Jathi (Myristica fragrans), Njavel (Eugenia jambolana) and Thanni (Terminalia bellerica).

3. *Authorised officers and appellate authorities.*—(1) The Government may by notification in the Gazette, appoint such officers as they think fit to be authorised officers for the purposes of this Act and may assign to them, such local limits as the Government think fit.

(2) The Government may, by notification in the Gazette, appoint such officers as they think fit to be appellate authorities for the purposes of this Act, and may assign them such local limits as the Government think fit.

4. *Restriction regarding cutting, etc., of trees.*—(1) No person shall, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt, any tree.

(2) The permission under sub-section (1) shall not be refused if—

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or windfallen:

Provided that where permission to cut a tree is granted on the ground specified in clause (a) or clause (b), the authorised officer shall impose as a condition for the grant of such permission the effective regeneration of an equal number of the same or other suitable species of trees; or

(c) such cutting is to enable the owner of the land in which the tree stands to use the area cleared or the timber cut for the construction of a building for his own use.

(3) No person shall cut or otherwise damage, or cause to be cut or otherwise damaged, the branch of any tree:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(4) No person shall, without the previous permission in writing of the authorised officer, destroy any plant of any tree or do any act which diminishes the value of any such plant.

(5) Nothing contained in sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) shall apply in respect of any tree or plant in any land referred to in sub-clause (ii) of clause (d) of section 2,—

(a) which has been or may be planted by the assignee of that land, other than a tree specified in sub-clause (ii) of clause (h) of the said section;

(b) the value of which has been paid by the assignee to the Government, other than a tree specified in sub-clause (ii) of the said clause (h).

(6) Nothing contained in sub-section (1), or sub-section (2) or sub-section (3) or sub-section (4) shall apply in respect of any tree or plant in the compound of any residential building in any area other than a hill area:

Provided that where such compound exceeds 0.8 hectare in extent, the provisions of this sub-section shall apply only in respect of an extent of 0.8 hectare immediately surrounding the residential building.

5. *Prohibition of cutting of trees in notified areas.*—(1) Notwithstanding anything contained in any law for the time being in force, or in any judgement, decree or order of any court, tribunal or other authority, or in any agreement or other arrangement, the Government may, with a view to preserving the tree growth in private forests or in the Cardamom Hills Reserve or in any other areas cultivated with cardamom, by notification in the Gazette, direct that no tree standing in any such area specified in the notification shall be cut, uprooted or burnt except on the ground that—

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or windfallen.

(2) No person shall, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt, any tree in any area specified in the notification under sub-section (1) on any of the grounds specified therein.

Explanation.—For the purposes of this sub-section, the expression "private forest" means any land which immediately before the 10th day of May, 1971, was a private forest as defined in the Kerala Private Forests (Vesting and Assignment) Act, 1971.

6. *Prohibition of cultivation.*—(1) No person shall use or cause to be used any land comprising a hill area with a slope of more than one in three for any purpose other than the growing of trees:

Provided that if any such land was under cultivation at the commencement of this Act, the authorised officer may, by order in writing, permit the continuance of the cultivation of such land with the same crops with which it was being cultivated at such commencement, subject to such conditions as he may impose including conditions relating to soil conservation measures and planting of trees thereon.

Explanation.—For the purposes of this sub-section, the term "trees" shall include any species of trees.

(2) No person shall use or cause to be used any land comprising a hill area with a slope of not more than one in three for new cultivation except with the previous permission in writing of the authorised officer who may, while granting such permission, impose such conditions as he may deem fit, including conditions relating to soil conservation measures.

(3) No person shall, after the expiry of one year from the date of the commencement of this Act, use or cause to be used for cultivation any land comprising a hill area with a slope of less than one in three except with the previous permission in writing of the authorisedofficer who may, while granting such permission, impose such conditions as he may deem fit, including conditions relating to soil conservation measures.

(4) Nothing contained in sub-section (2) or sub-section (3) shall apply to any land with a slope of less than one in ten.

7. *Application for permission.*—(1) Every application for permission under section 4 or section 5 or section 6 shall be in such form and shall contain such particulars as may be prescribed and shall be made to the authorised officer.

(2) The procedure to be followed by the authorised officer in granting or refusing permission under section 4 or section 5 or section 6 shall be such as may be prescribed.

8. *Appeal.*—(1) Any person aggrieved by an order refusing to grant permission under section 4 or section 5 or section 6 may, within ninety days of the receipt of such order, prefer an appeal to the appellate authority:

Provided that the appellate authority may admit an appeal preferred after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) An appeal under sub-section (1) shall be in such form and shall contain such particulars as may be prescribed.

(3) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, pass such order thereon as it thinks fit.

9. *Revision.*—(1) The Government may, either *suo motu* or on application by any person aggrieved by an order of the appellate authority under section 8, call for and examine the record of any order passed by the appellate authority for the purpose of satisfying themselves as to the legality, propriety or regularity of such order and pass such order thereon as they think fit.

(2) The Government shall not of their own motion revise any order under sub-section (1) if that order has been passed more than three months previously.

(3) An application under sub-section (1) by an aggrieved person shall be made within a period of sixty days from the date on which the order of the appellate authority was communicated to him:

Provided that the Government may admit an application made after the expiry of the said period of sixty days, if they are satisfied that the applicant had sufficient cause for not making the application within that period.

(4) An order prejudicial to a person shall not be passed under sub-section (1) unless that person has been given a reasonable opportunity of showing cause against such order.

Explanation.—An order declining to interfere shall, for the purposes of this sub-section, be deemed to be an order prejudicial to a person.

10. *Penalties.*—Whoever contravenes any of the provisions of section 4 or sub-section (2) of section 5 or section 6 or a direction contained in a notification under sub-section (1) of section 5 or any of the terms and conditions subject to which a permission has been granted under this Act shall be punishable,—

(a) in the case of a first offence, with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both; and

(b) in the case of a second or subsequent offence, with imprisonment for a term which shall not be less than one month but which may extend to six months, and with fine which shall not be less than one thousand rupees but which may extend to five thousand rupees.

11. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of its business, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm, society or other association of individuals; and

(b) "director",—

(i) in relation to a firm, means a partner in the firm;

(ii) in relation to a society or other association of individuals means the person who is entrusted under the rules of the society or other association, with the management of the affairs of the society or other association, as the case may be.

12. *Powers of authorised officers and appellate authorities.*—Every authorised officer and appellate authority shall, for the purpose of performing his or its functions under this Act, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit; and

(d) such other matters as may be prescribed.

13. *Powers of entry and inspection.*—The authorised officer or any other officer generally or specially authorised by the Government in this behalf may, with such assistants, if any, being persons in the service of the Government, as he thinks fit, at all reasonable times enter upon any land for the purpose of ascertaining whether any of the provisions of this Act or any of the terms and conditions subject to which any permission has been granted under this Act has been contravened.

14. *Power to seize timber and other articles involved in commission of offence.*—(1) Where any officer of the Forest Department not below of the rank of Forester or any Police Officer not below the rank of Sub-Inspector has reason to believe that any tree has been cut in contravention of section 4 or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, he may seize the timber of such tree together with all tools, ropes, chains and other articles used in the commission of such offence and all boats, vehicles and cattle used for carrying such timber.

Explanation.—The terms "boat" and "vehicle" in this section, section 15 and section 16 shall include all the articles and machinery kept in the boat or vehicle, as the case may be, whether fixed to the same or not.

(2) Every officer seizing any timber under sub-section (1) shall place on such timber a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the authorised officer.

(3) On receipt of a report under sub-section (2), the authorised officer shall,—

(a) if he is satisfied that the timber mentioned in such report is of any tree cut in contravention of section 4 or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, make a report of such seizure to the Judicial Magistrate of the First Class having jurisdiction over the area in which such seizure has been made;

(b) if he is not so satisfied, make a report of such seizure to such authority as may be prescribed.

(4) The authority to which a report is made under clause (b) of sub-section (3) shall,—

(a) if it is satisfied that the timber mentioned in such report is of any tree cut in contravention of section 4, or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, make a report of the seizure of such timber to the Judicial Magistrate of the First Class having jurisdiction over the area in which such seizure has been made;

(b) if it is not so satisfied, order that such timber and any tool, rope, chain or other article or any boat, vehicle or cattle seized along with it shall be returned to the person from whom they were seized.

15. *Power to release property seized under section* 14.—The authorised officer may release any timber and any tool, rope, chain or other article or any boat, vehicle or cattle seized under section 14 and in respect of which a report has been made to the Judicial Magistrate of the First Class under clause (a) of sub-section (3) or clause (a) of sub-section (4) of that section, on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before such Magistrate.

16. *Procedure by Magistrate.*—Upon the receipt of a report under clause (a) of sub-section (3) or clause (a) of sub-section (4) of section 14, the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the timber and any tool, rope, chain or other article or any boat, vehicle or cattle seized along with it, according to law.

17. *Procedure as to perishable property seized under section* 14.—(1) Notwithstanding anything hereinbefore contained,—

(a) the Magistrate to whom a report is made under section 14 may direct the sale of any property seized under that section, which is subject to speedy and natural decay; and

(b) if, in the opinion of the authorised officer, it is not possible to obtain the orders of the Magistrate under clause (a) in time, such officer may sell the property himself, remit the sale proceeds into the nearest Government Treasury and make a report of such seizure, sale and remittance to the Magistrate referred to in the said clause, and thereupon such Magistrate shall take such measures as may be necessary for the trial of the accused.

(2) The Magistrate may deal with the proceeds of the sale of any property sold under clause (a) or clause (b) of sub-section (1) in the same manner as he might have dealt with the property if it had not been sold.

18. *Saving of power to release property seized.*—Nothing hereinbefore contained shall be deemed to prevent the authorised officer from directing at any time the immediate release of any property seized under section 14 and the withdrawal of any charge made in respect of such property:

Provided that the powers under this section shall be exercised by the authorised officer only for good and sufficient reasons to be recorded in writing and with the previous approval in writing of the Chief Conservator of Forests.

19. *Institution of prosecution.*—No prosecution shall be instituted against any person without the sanction of the authorised officer.

20. *Cognizance of offences.*—No court inferior to that of a Judicial Magistrate of the First Class shall try any offence under this Act.

21. *Bar of jurisdiction of civil courts.*—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by any officer or authority or the Government.

22. *Indemnity.*—No suit, prosecution or other legal proceedings shall lie against the Government or any officer or authority or any other person for anything which is in good faith done or purporting to have been done under this Act or any rule or order made thereunder.

23. *Restriction regarding cutting, etc., of trees in future assignments.*—Notwithstanding anything contained in any law for the time being in force, any assignment after the commencement of this Act of land belonging to the Government, under any law for the time being in force shall be subject to the condition that the assignee shall not, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt, any tree standing on such land at the time of such assignment, and the provisions of this Act shall apply in relation to such permission as if they apply in relation to a permission under section 4.

24. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the girth of trees which may be permitted to be cut;

(b) the terms and conditions subject to which permission may be granted;

(c) the procedure to be followed by the authorised officer before granting or refusing permission;

(d) the procedure to be followed by the appellate authority in the disposal of an appeal under section 8;

(e) any other matter which has to be, or may be, prescribed.

25. *Laying of notifications and rules before Legislative Assembly.*—Every notification issued under sub-section (1) of section 5 and every rule made under section 24 shall be laid, as soon as may be after it is issued or made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the notification or rule or decides that the notification or rule should not be issued or made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

26. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything not inconsistent with such provisions, which may appear to them to be necessary for removing the difficulty.

27. *Repeal and saving.*—(1) The Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974 (7 of 1974) and the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983 (21 of 1983) are hereby repealed.

(2) Notwithstanding the repeal of the said Ordinance, anything done or any action taken under that Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

Indiscriminate felling and destruction of trees in the State have been brought to the notice of Government and it is feared that it may result in quick denudation of the forest growth and consequent soil erosion, land slides, flood etc. This is also detrimental to ecological balance. Of late, felling of trees and destruction of flora and fauna are reported to be on the increase. As there was no effective law to prevent this tendency, it was proposed to enact a law for imposing restrictions on the cutting of trees in the State and regulating cultivation in the hill areas of the State. As the Legislative Assembly was not in session and as the matter was of an urgent nature the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983 (21 of 1983) was promulgated by the Governor on the 17th day of June, 1983. The Bill seeks to replace the Ordinance by an Act of the Legislature.

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to provide for the appointment of authorised officers and appellate authorities. The intention is to appoint existing officers to be authorised officers and appellate authorities and therefore no new posts are likely to be created for the purpose. However, for the successful implementation of the legislation, it may be necessary to appoint some additional field staff and ministerial staff. The number of officers and other employees to be additionally appointed for the purpose can be decided only in the course of implementation of the legislation and therefore the expenditure to be incurred on this account cannot be estimated now with any degree of accuracy. No other expenditure is likely to be incurred if the Bill is enacted and brought into operation.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 3 seeks to empower the Government to appoint, by notification in the Gazette, authorised officers for the purposes of the Act.

Sub-clause (2) of clause 3 seeks to authorise the Government to appoint, by notification in the Gazette, appellate authorities for the purposes of the Act.

Under sub-clause (1) of clause 5, Government may, by notification in the Gazette, direct that no tree standing in private forests or in Cardamom Hills or in any area cultivated with cardamom shall be cut, uprooted or burnt except on the grounds specified in that sub-section.

Clause 7 seeks to empower the Government to prescribe the form of, and the particulars to be contained in, an application for permission under sections 4, 5 or 6 and the procedure to be followed by the authorised officer in granting or refusing such permission.

Clause 8 seeks to empower the Government to prescribe the form of appeal under that clause and the particulars to be contained in such appeal.

Under clause 12 the Government may prescribed matters, other than those specified in that clause, in respect of which the authorised officer and the appellate authority shall have powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, for the purpose of performing his or its functions under the Act.

Under clause 13, the Government may generally or specially authorise any officer to exercise the powers of entry and inspection provided for in that clause.

Under sub-clause 3(b) of clause 14, the Government may prescribe the authority to which the authorised officer shall make a report when he is not satisfied that the timber seized by a Forest Officer is cut in contravention of section 4, or sub-section(2) of section 5 or a direction under sub-section (1) of section 5.

Clause 24 seeks to confer power on the Government to make rules to carry out the purposes of the Act. The matters in respect of which rules may be made relate *inter alia* to the girth of trees which may be permitted to be cut, the terms and conditions subject to which permission may be granted, the procedure to be followed by the authorised officer before granting or refusing permission and the procedure to be followed by the appellate authority in the disposal of an appeal under section 8.

Clause 26 seeks to empower the Government to make orders not inconsistent with the provisions of the Act for removing difficulties in giving effect to the provisions of the Act.

The matters in respect of which notifications may be issued or rules or orders may be made are matters of administrative nature or matters of detail. Besides, the notification to be issued under sub-section (1) of section 5 and the rules to be made under the Act will be subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is therefore of a normal character.

K. P. NOORUDDIN.

Reg. No. KL/TV(N)/12



KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVIII] Trivandrum, Monday, 25th July 1983 / 3rd Sravana 1905 [No. 78

GOVERNMENT OF KERALA

Labour (E) Department

NOTIFICATION

G.O. Rt. No. 887/83/LBR. *Dated, Trivandrum, 23rd July,* 1983.

S.R.O. No. 934/83.—In exercise of the powers conferred by section 27 of the Minimum Wages Act, 1948 (Central Act 11 of 1948), the Government of Kerala hereby make the following amendment to Part 1 of the Schedule to the said Act in its application to the State of Kerala after having given three months' notice as required by the said section, namely:—

AMENDMENT

In Part 1 of the Schedule to the Minimum Wages Act, 1948 (Central Act 11 of 1948), after item 43, the following item shall be added, namely:—

"44. Employment in Liquor Trading and Liquor Vending Industry".

By order of the Governor,

V. KRISHNAMURTHY,
Special Secretary to Government.

33/3108/MC.

Explanatorv Note

(This does not form part of the notification, but is intended to indicate its general purport).

Government have decided to fix minimum wages in the employment in Liquor Trading and Liquor Vending Industry. Accordingly Government have decided to add this employment in the Schedule Part I to the Minimum Wages Act, 1948.

This notification is intended to achieve the above object.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1983.